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In re Application of:

Oswaldo da Costa e Silva et al.

Serial No. 09/828,302

Filed: April 6, 2001

For: Phosphatase Stress-Related Proteins
and Methods of Use in Plants

Art Unit: 1638

Examiner: Cynthia E. Collins

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, DC 20231

Sir:

Responsive to the Office Communication mailed April 25, 2002, Applicants provisionally elect with traverse Claim Group I which encompasses claims 1-12 and 17-26, and further elect with traverse Invention D which encompasses the PP2C-1 protein and nucleic acid pair (SEQ ID NOS:9 and 14). The restriction requirement between the nine groups of claims is respectfully traversed on the basis that the examination of the nine groups of claims would not be an undue burden because of their close technological relationship. The Examiner also requests the election of one polypeptide and polynucleotide pair by sequence identification number.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on May 28, 2002.

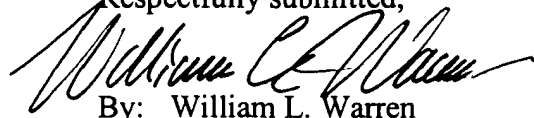
William L. Warren, Reg. No. 36-714

In order for a restriction requirement to be appropriate, there must be a serious burden on the Examiner to search all of the inventions and the inventions must be independent or distinct as claimed. First, the Examiner has not provided evidence that a search of all the PHSRP proteins and nucleic acids would be seriously burdensome. Second, the Examiner has not provided evidence that the inventions are independent or distinct as claimed. The fact that all of these PHSRP coding nucleic acids are listed as a Markush group in Claims 17 and 18 shows that they are not independent and distinct as claimed. When the allegedly distinct inventions are presented in a Markush group, Section 803.02 of the MPEP states that "if the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group in the claims on the merits, even though they are directed to independent and distinct inventions." Therefore, Applicants respectfully request that the Examiner withdraw the requirement for election of a single PHSRP protein and nucleic acid pair.

In the alternative, Applicants would elect with traverse Claims 1-12 and 17-26 (Claim Group I), and would further elect with traverse the PP2C-1 protein and nucleic acid pair (SEQ ID NOS:9 and 14). The election is respectfully traversed on the basis that the examination of claims relating to PP2C-1 and PP2C-2 would not be an undue burden because of their close relationship. For the foregoing reasons, Applicants elect with traverse Claims 1-12 and 17-26 (Claim Group I), and further elect with traverse the PP2C-1 protein and nucleic acid pair (SEQ ID NOS:9 and 14).

The foregoing is submitted as a full and complete response to the Office Communication mailed April 25, 2002. If there are any issues which can be resolved by telephone conference or an Examiner's Amendment, the Examiner is invited to call the undersigned attorney at (404) 853-8081.

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Respectfully submitted,

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